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10/802,964

03/17/2004

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06/29/2007

EXAMINER

OLSON, MARGARET LINNEA

ART UNIT

PAPER NUMBER

3782

MAIL DATE

DELIVERY MODE

06/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/802,964

Applicant(s)

SMITH ET AL.

Examiner

Margaret L. Olson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7 and 8 is/are pending in the application.
- 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,7 and 8 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 5, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almo (US 6,308,875) in view of Diamond (US 6,189,153) further in view of Wehner (US 3,413,399). Almo discloses a holster with a plurality of pockets (column 7, lines 31-35) and a belt 46 to support the holster to a body (figure 2). Almo does not disclose removable sleeves to be inserted into the pockets. Diamond teaches a removable sleeve to protect a pocket from sharp objects stored there. It would have been obvious to one of ordinary skill in the art at the time of invention to include the lining sleeves of Diamond in the pockets of Almo, so that the sharp surgery tools do not injure the wearer of the tool holster (Diamond column 1, lines 60-63). The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Almo as modified by Diamond, which is capable of being used in the intended manner, i.e., to hold tools used by a hairdresser (see M.P.E.P. 2111). Almo as modified by Diamond does not disclose an antimicrobial agent applied to the removable sleeves. Wehner teaches an antimicrobial composition for application to textiles of

natural or synthetic fibers, such as plastics or paper (column 1, lines 40-60), that inhibits the growth of microorganisms (column 1, lines 61-70). It would have been obvious to one of ordinary skill in the art at the time of invention to apply the composition of Wehner to the holster and removable sleeves of Almo as modified by Diamond in order to prevent the growth of microorganisms in the holster, especially since Almo stresses the need for the structure to be easily disinfectable (column 10, lines 5-10).

With respect to claim 3, Diamond discloses the removable sleeve as being made of a flexible and resistant material, such as a plastic (column 1, lines 31-33).

With respect to claim 5, Diamond discloses that the removable sleeve is made of a flexible material resistant to perforation, which includes a stiff paper. It would have been obvious to one of ordinary skill in the art at the time of invention to use paper to create a flexible, resistant sleeve for use in the structure of Almo, since it would be cheap to produce and easier to dispose of.

With respect to claim 7, more than one sleeve of Diamond's may be inserted into the structure of Almo. It would be obvious to one of ordinary skill in the art at the time of invention to insert a pocket liner sleeve of Diamond into each pocket of Almo's structure that would be used repetitively or for sharp objects (Diamond column 1, lines 13-17).

With respect to claim 8, the primary reference Almo has a removable panel 12 that provide access to the insides of the pockets so that they may be cleaned (column 9, line 63-column 10, line 16).

Allowable Subject Matter

3. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

4. Applicant's arguments filed 4/9/07 have been fully considered but they are not persuasive. Applicant argues that there is no motivation to combine the Almo and Diamond references since hairdressers do not sterilize their tools, while surgeons must. The applicant is mistaken: hairdressers do sterilize their instruments in between each customer using anti-bacterial washes, for numerous sanitary reasons. The fields of surgery and hairdressing are very analogous in this manner. The applicant argues that the references do not explicitly state that sharp instruments can injure their wearers, and that if they do then there could be a different solution to the problem than the one proposed by the applicant in the disclosure. Regardless of whether the inventor chooses to discuss it, sharp objects are well known to puncture things. The combination of Almo and Diamond remains proper, and other potential solutions for the puncturing problems are moot. The applicant argues that the combination of Diamond is improper, because the inserts of Diamond would be materially changed and not fulfill their function if they had to be cleaned or disposable. It is well known that the robust, flexible material of which the Diamond inserts are made is disposable. The combination is proper, since the inserts still meet the inventor's objectives in combination with Almo

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and Wehner. The applicant argues that Almo suggests no combination with Wehner, and that the active ingredients of Wehner are not anti-microbial. Wehner discloses that the active ingredients in his invention are anti-microbial. In addition, since Wehner suggests a combination with a device, it is immaterial that Almo does not. The combinations in this rejection are proper, and disclose all aspects of the claimed invention.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret L. Olson whose telephone number is (571) 272-9002. The examiner can normally be reached on MTWR, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mlo


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER